

1 Michael C. Kelley (SBN 090062)  
mkelley@sidley.com  
2 Bradley H. Ellis (SBN 110467)  
bellis@sidley.com  
3 Jose F. Sanchez (SBN 161362)  
jose.sanchez@sidley.com  
4 Jodi E. Lopez (SBN 231117)  
jlopez@sidley.com  
5 SIDLEY AUSTIN LLP  
555 West Fifth Street, 40th Floor  
6 Los Angeles, California 90013  
Telephone: (213) 896-6000  
7 Facsimile: (213) 896-6600

8 Michael L. Rugen (SBN 85578)  
mrugen@sidley.com  
9 Robert B. Martin III (SBN 235489)  
rbmartin@sidley.com  
10 SIDLEY AUSTIN LLP  
555 California Street, Suite 2000  
11 San Francisco, California 94104  
Telephone: (415) 772-1200  
12 Facsimile: (415) 772-7400

13 Attorneys For Defendant KPMG LLP  
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16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA  
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19 IN RE NEW CENTURY  
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CASE NO. 2:07-cv-00931-DDP (DMO)

**DISCOVERY MATTER**

[PROPOSED] PROTECTIVE ORDER

Judge: Hon. Fernando M. Olguin

[PROPOSED] PROTECTIVE ORDER

1 Pursuant to Federal Rule of Civil Procedure 26(c), the Court, having  
2 considered the briefing and arguments of the parties, hereby orders as follows:

3 **1. Good Cause Statement.**

4 The Designated Material subject to this Protective Order constitute  
5 confidential and proprietary information specific to defendants' businesses,  
6 including Trade Secret Material (defined below), the public release of which will  
7 cause competitive disadvantage to defendants. In particular, the Designated  
8 Material reflects the methodology and processes used by KPMG LLP ("KPMG") to  
9 plan, design, and perform audits and quarterly reviews; that methodology has been  
10 developed and refined at great time and expense to KPMG, and its public disclosure  
11 (and potential subsequent use by KPMG's competitors) is likely to lead to  
12 significant competitive harm. In addition, the Underwriter Defendants are  
13 investment banks that possess private financial information regarding certain  
14 investors and investments that they must keep confidential due to regulatory and  
15 contractual confidentiality requirements. Further, Designated Material containing  
16 the private personal or financial information of employees of the named parties or  
17 New Century entities (defined below as "Personal Private Material") constitute  
18 private information and implicate constitutional and statutory privacy rights, and  
19 the public release of such information could cause damage to the person's  
20 reputation and enable financial crimes. Good cause also exists for this Protective  
21 Order because it eliminates unnecessary burdens on document production and  
22 avoids unnecessary and burdensome motion practice. This Protective Order does  
23 not confer blanket protections on all disclosures or responses to discovery in this  
24 the above-captioned case (the "Action"), and the protection it affords extends only  
25 to the limited information or items that are entitled under the applicable legal  
26 principles to treatment as confidential.

1           **2.     Exercise of Restraint and Care in Designating Material for**

2     **Protection.** Each party or non-party (“Designating Party”) that designates  
 3 information or items for protection under this Protective Order must take reasonable  
 4 steps to limit the designation to specific material that qualifies for protection.  
 5 Mass, indiscriminate, or routinized designations of confidentiality that are  
 6 inconsistent with the terms of this agreement are not appropriate.

7           The Designating Party bears the burden of establishing that all designated  
 8 material or information is confidential. If it comes to a Designating Party’s  
 9 attention that information or items that it designated for protection do not qualify  
 10 for protection, that Designating Party must promptly notify all other parties that it is  
 11 withdrawing the designation.

12           **3.     Material That May Be Designated Under This Protective Order.**

13           Any Designating Party may designate as “Confidential Information” any  
 14 non-public document, or portion thereof, and any other form of evidence or other  
 15 discovery (including, but not limited to, all documents, electronically stored  
 16 information, and tangible things as defined in Rule 34(a) of the Federal Rules of  
 17 Civil Procedure) (“Discovery Material”), produced by such Designating Party, if  
 18 the Discovery Material contains (1) non-public information, including any formula,  
 19 pattern, compilation, program, device, method, technique, or process, that derives  
 20 independent economic value, actual or potential, from not being generally known to  
 21 the public or to other persons who can obtain economic value from its disclosure or  
 22 use; and is the subject of efforts that are reasonable under the circumstances to  
 23 maintain its secrecy (“Trade Secret Material”); and (2) non-public personal or  
 24 financial information of defendants, their employees or representatives, or of  
 25 investors in New Century securities (“Private Personal Material”). Trade Secret  
 26 Material includes Discovery Material reflecting KPMG’s Proprietary Audit  
 27 Material, which includes proprietary audit planning workpapers, manuals, forms,  
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1 policies, guidance, processes, and methodology, as well as proprietary formulas and  
2 computer programs or software used during the audit or quarterly review process.  
3 Private Personal Material includes social security numbers, non-public home or  
4 cellular telephone numbers and addresses, non-public compensation or other  
5 personal financial information, personnel evaluations, and medical and banking  
6 information; and such information shall be deemed to be and treated as Confidential  
7 Information, regardless of lack of specific designation.

8 Discovery Material designated as “Confidential Information” is referred to  
9 herein as “Designated Information.” Designated Information does not include any  
10 publicly available information. The terms of this Protective Order apply to  
11 Discovery Material that was produced or provided by any Designating Party prior  
12 to its entry.

13 **4. Use of Discovery Material and Designated Information.**

14 Designated Information shall be held in confidence by each person to whom it is  
15 disclosed, shall be used solely for purposes of this Action, and may not be disclosed  
16 to any person, except as permitted in this Protective Order. Without limitation,  
17 Designated Information shall not be used, made available, or disclosed for the  
18 purposes of any other litigation, judicial, administrative, or regulatory proceeding,  
19 dispute or case, or used for any commercial, business, competitive, or other  
20 purpose. Nothing in this Protective Order shall prevent the Designating Party from  
21 using or disclosing its own Designated Information for any purpose as it deems  
22 appropriate, without impairing the confidentiality obligations imposed upon all  
23 other parties subject to this Protective Order. In addition, nothing in this Protective  
24 Order shall impose any restrictions on the use or disclosure by a party or its counsel  
25 of documents, material and/or information obtained by such party or its counsel  
26 from a source independent of the discovery proceedings in this lawsuit, subject to  
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1 any limitations placed on the disclosure of the documents, materials, and/or  
2 information by the independent source.

3       **5. Procedure for Designating Discovery Materials.** At or before the  
4 time when access or custody is given to the Receiving Party (defined as a party  
5 receiving or granted access to Discovery Materials), the Designating Party shall  
6 designate (in whole or in part) all Discovery Material that contains Designated  
7 Information by marking all pages or other such materials subject to the claim of  
8 confidentiality as “CONFIDENTIAL” or “CONFIDENTIAL – SUBJECT TO  
9 PROTECTIVE ORDER,” or by taking other reasonable steps to so designate the  
10 information or documents. Electronic information produced in its native or other  
11 electronic format shall be produced on media labeled with the legend  
12 “CONFIDENTIAL” or “CONFIDENTIAL – SUBJECT TO PROTECTIVE  
13 ORDER,” and all such electronic information shall at all times and in all forms be  
14 deemed to bear such legend, and to be subject to the provisions of this Protective  
15 Order, to the same extent as if it had been produced in hard copy with such legend  
16 affixed to each page. If the Receiving Party transfers such data to any computer  
17 system, or other storage media, or prints hard copies, the Receiving Party shall  
18 ensure that reasonable steps are taken to maintain the confidentiality of such  
19 information in accordance with this Protective Order as if such information had  
20 been produced in hard copy bearing the same legend that is affixed to the media on  
21 which such data has been produced.

22       In the event the Designating Party elects to produce Designated Information  
23 for inspection, no marking need be made by the Designating Party in advance of the  
24 inspection, and all inspected materials shall be deemed to be Confidential  
25 Information until the time copies of the documents that have been inspected are  
26 delivered to the Receiving Party. Once copies are delivered to the Receiving Party,  
27 only those materials designated CONFIDENTIAL or CONFIDENTIAL –  
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1 SUBJECT TO PROTECTIVE ORDER by the Designating Party shall be treated as  
2 such.

3       **6. Inadvertent Failure to Designate.** Any Designating Party who  
4 inadvertently fails to designate its own Discovery Material as Designated  
5 Information must do so either by the later of thirty (30) days after production of the  
6 Discovery Material or within ten (10) days after discovery of the inadvertent failure  
7 to designate the Discovery Material as Designated Information, and provide written  
8 notice to each Receiving Party of the newly discovered Designated Information.  
9 Upon receiving such notice, each Receiving Party shall treat the Designated  
10 Information, and all copies and/or versions of the Designated Information, in  
11 accordance with the terms of this Protective Order as if such Designated  
12 Information had always been designated as Designated Information.

13       **7. Procedure for Designating Deposition Testimony.** At the request of  
14 any Designating Party, either made on the record during the course of a deposition  
15 or within 30 days after receipt of the transcript, the deposition testimony and all  
16 copies of any transcript of the deposition and any deposition exhibits that contain  
17 Designated Information may be so designated subject to this Protective Order, and  
18 the original and all copies of such deposition transcripts and exhibits shall be  
19 marked accordingly by the reporter or by the party or parties then having possession  
20 of the original and the copies.

21       Until the designation period has elapsed for a given deposition transcript, that  
22 transcript shall be treated as Designated Information and shall be subject to the  
23 provisions hereof. Further, during depositions, any party claiming that information  
24 that is to be disclosed or upon which questions may be based is Designated  
25 Information may exclude from the room persons not identified in this Protective  
26 Order as a person who may access Designated Information.

1           **8.     Procedure for Objection to Designation.** Any party may object to  
 2 the designation of any Discovery Material as Designated Information, or seek to  
 3 amend this Protective Order, pursuant to Central District Local Rule 37. Pursuant  
 4 to that rule, counsel for the objecting party shall give written notice to counsel for  
 5 the Designating Party, identifying the designated document or information to which  
 6 it objects and the reasons for its objection. The Designating Party shall, within ten  
 7 (10) calendar days after receiving such notice, meet and confer with the objecting  
 8 party in a good faith effort to resolve the matter. Failing such resolution, the Parties  
 9 shall file a Joint Stipulation with the Court for resolution pursuant to L.R. 37-2 *et*  
 10 *seq.* The party seeking to maintain a document as confidential bears the burden of  
 11 showing specific prejudice or harm will result if no protective order is granted.  
 12 Any Designated Information that is the subject of a dispute over designation shall  
 13 be treated as Designated Information pending the resolution of any objection.

14           **9.     Access to Designated Information by the Parties and their**  
 15 **Counsel.** Except with the prior written consent of the Designating Party,  
 16 Confidential Information shall not be used, disclosed or distributed to any person  
 17 other than the following:  
 18           a. The named parties in this Action;  
 19           b. Current and former officers, partners, or employees of the named  
 20 parties to this Action, and the named parties' insurers, to the extent  
 21 deemed necessary by counsel for the prosecution or defense of this  
 22 Action, provided, however, that those persons shall have access to  
 23 Confidential Information only after they have been provided a copy  
 24 of this Order for review and, prior to being shown Confidential  
 25 Information, counsel makes all reasonable efforts to secure the  
 26 person's execution of the Agreement to Abide by Protective Order  
 27 attached hereto as Exhibit A. In circumstances in which a person  
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1 refuses to sign the Agreement to Abide by Protective Order after  
2 counsel has undertaken such efforts, the person may be shown  
3 Confidential Information only after counsel reads to the person the  
4 provisions of the Agreement to Abide by Protective Order, and  
5 such person is not permitted to retain copies of such Confidential  
6 Information. This provision does not apply to named parties in the  
7 Action;

- 8 c. Counsel for the named parties to this Action, including in-house  
9 counsel and co-counsel, and their paralegals, clerical and other  
10 assistants;
- 11 d. As to any document, its author, its addressee(s), and any other  
12 person indicated on the face of the document as having received a  
13 copy;
- 14 e. Persons retained by a party or his, her or its outside counsel to serve  
15 as expert witnesses or consultants to provide advice to counsel in  
16 connection with this Action (subject to the additional terms set  
17 forth in Paragraph 11 below);
- 18 f. Stenographers, videographers, and their support personnel engaged  
19 to transcribe and/or record depositions conducted in this Action;
- 20 g. The Court, its support personnel, court reporters, stenographers,  
21 jurors and alternate jurors, if any;
- 22 h. Any special masters or mediators appointed by the Court and their  
23 direct staff and counsel; and,
- 24 i. Persons who are deposed or appear as witnesses in this Action (and  
25 their counsel), either in preparation for or during their testimony,  
26 provided, however, that prior to being shown Confidential  
27 Information, counsel makes all reasonable efforts to secure the  
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1 person's execution of the Agreement to Abide by Protective Order  
2 attached hereto as Exhibit A. In circumstances in which a person  
3 refuses to sign the Agreement to Abide by Protective Order after  
4 counsel has undertaken such efforts, the person may be shown  
5 Confidential Information only after counsel reads to the person the  
6 provisions of the Agreement to Abide by Protective Order, and  
7 such person is not permitted to retain copies of such Confidential  
8 Information.

9 **10. Access to Designated Information for Litigation Support Services.**

10 Any Designated Information may be disclosed to persons requested by counsel to  
11 furnish services of exhibit preparation, photocopying, document coding, image  
12 scanning, jury consulting, or the creation of any computer database from documents  
13 containing Designated Information, or other services provided in connection with  
14 this Action, provided that such persons are informed and agree in writing to the  
15 terms of this Protective Order by signing a copy of the Agreement to Abide by  
16 Protective Order attached hereto as Exhibit A.

17 **11. Access to Confidential Information by Experts.** Any Confidential

18 Information may be disclosed to experts and consultants retained for this matter  
19 provided that:

- 20 a. in advance of the receipt of any Confidential Information, the  
21 expert or consultant signs a copy of the Agreement to Abide by  
22 Protective Order attached hereto as Exhibit A; and  
23 b. the expert or consultant provides a copy of each executed  
24 Agreement to Abide by Protective Order executed pursuant to this  
25 paragraph to retaining counsel prior to the intended disclosure;  
26 retaining counsel shall maintain the executed copies of the  
27 Agreement to Abide by Protective Order, which shall not be  
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1 produced to counsel for the other parties except by agreement or  
2 Court order.

3 If these two requirements are satisfied, the expert or consultant may fully  
4 disclose any and all Confidential Information to his or her support staff/assistants.  
5 It is not necessary for any member of that support staff or those assistants to sign  
6 the Agreement to Abide by Protective Order, but they will nonetheless be deemed  
7 bound by the expert's or consultant's execution of the Agreement to Abide by  
8 Protective Order.

9 **12. Retention of Agreement to Abide by Protective Order:** During the  
10 pendency of the Action (including any appeals), counsel must retain all signed  
11 copies of the Agreement to Abide by Protective Order (i.e., Exhibit A) pursuant to  
12 which it has allowed disclosure of Designated Information in accordance with the  
13 provisions of this Protective Order. Counsel for other Parties may request a copy of  
14 any or all of the Agreements to Abide by Protective Order and counsel agrees to  
15 meet and confer in good faith regarding the provision of a copy of any or all of the  
16 Agreements to Abide by Protective Order. If the requested Agreements to Abide  
17 by Protective Order are not provided to counsel, then counsel may apply to the  
18 Court for an order compelling disclosure on a showing of good cause.

19 **13. Submission of Designated Information to Court In Connection**  
20 **With Motions or Other Pretrial Proceedings.** In connection with any motion or  
21 other pretrial proceeding, if any party intends to submit to the Court any pleading,  
22 declaration or other paper containing, appending, summarizing, excerpting or  
23 otherwise embodying Designated Information, that filing party shall either  
24 (1) provide the Designating Party with five (5) court days notice of the filing of the  
25 Designated Information to allow the Designating Party an opportunity to provide  
26 the filing party with a written application and proposed order in support of the  
27 grounds for the sealing of the document, which the filing party shall file along with  
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1 the Designated Information in accordance with the procedures set forth in Central  
2 District of California Local Rule 79-5; or (2) file the document provisionally under  
3 seal in accordance with the procedures set forth in Central District of California  
4 Local Rule 79-5 by filing a written application indicating that the document has  
5 been designated as confidential by one of the parties pursuant to the terms of a  
6 protective order and that the protective order allows the Designating Party five (5)  
7 court days after the filing within which to support the grounds for the sealing of the  
8 document. The Designating Party shall then have five (5) court days after such  
9 filing within which to support the grounds for sealing the document. In the event  
10 the Court rejects the provisionally filed document(s) prior to the Designating  
11 Party's submission of the written application and proposed order, then the filing  
12 party shall re-file the document(s) along with the written application and proposed  
13 order provided by the Designating Party and the Court's rejection of such filing  
14 shall not be deemed to result in the filing party having missed a filing deadline  
15 solely for that reason. The Designating Party shall provide the written application  
16 and proposed order within five (5) court days of the Court's rejection of the  
17 provisionally filed document(s).

18 **14. Additional Procedures to Protect Confidential Information Used**  
19 **in Open Court.** Any party who desires to use Designated Information at a hearing  
20 to be held in open court shall provide notice to opposing counsel and counsel for  
21 the Designating Party at least two court days in advance of the hearing at which  
22 counsel intends to use the Designated Information; provided, however, that in  
23 circumstances in which it is not reasonably possible to provide notice at least two  
24 court days in advance of the hearing, such notice shall be provided at the earliest  
25 reasonable opportunity prior to the hearing.

26 Prior to disclosing Designated Information in any proceeding before the  
27 Court, the party that intends to disclose Designated Information shall take  
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1 reasonable steps to maintain the confidentiality of the Designated Information. The  
2 party shall so inform the Court so that the Court may decide what precautions, if  
3 any, are appropriate to protect the Designated Information, including how exhibits  
4 or other documents containing Designated Information shall be used or filed to  
5 maintain their confidentiality.

6 **15. Use of Designated Information At Trial:** After, or in connection  
7 with, the final pretrial conference, the Parties shall meet and confer to reach an  
8 agreement, subject to the approval of the Court, as to the confidentiality of  
9 information to be used at trial and documents designated as trial exhibits, or, if  
10 necessary, a method of maintaining the confidentiality of such information and  
11 documents at trial.

12 **16. Modifications in Writing.** Nothing herein shall prevent disclosure  
13 beyond the terms of this Protective Order if counsel for the Designating Party  
14 consents in writing or on the record to such disclosure. Any consent given under  
15 this Protective Order with respect to confidentiality of the particular document shall  
16 not be deemed a waiver of any other designation. The Parties may amend or  
17 modify any provision of this Protective Order by mutual agreement, which  
18 agreement shall be embodied in a written stipulation to be approved by the Court.

19 **17. No Waiver.** Nothing in this Order shall prejudice the right of any  
20 party to object to the production of any document or part thereof upon any  
21 appropriate ground, including any applicable privilege, or to object to the  
22 production of documents in a particular format, and nothing herein shall be  
23 construed as a waiver of such rights. Moreover, nothing in this Protective Order  
24 shall prejudice the right of any party to object to the authenticity and/or  
25 admissibility at trial of any material, whether Designated Information or not, on any  
26 appropriate ground, and nothing herein shall be construed as a waiver of such right.

1                   **18.    Inadvertent Production of Privileged Materials.**

2                   (1) With respect to the inadvertent production of privileged or  
3 protected material, the Parties shall follow the procedures set forth in Federal Rule  
4 of Civil Procedure 26(b)(5)(B); provided, however, that any notification of the  
5 inadvertent production of privileged or protected material must be in writing.  
6 Regarding the inadvertent production of privileged or protected material that was  
7 produced via a hard drive or other electronic form, such that it cannot be detached  
8 for return, the following additional procedures shall apply: The Receiving Party  
9 shall refrain from reviewing or using the material in any way, pending the logging  
10 of the material on a privilege log, and the resolution of any challenges to the  
11 assertion of the privilege or protection. Upon the resolution of any such challenges,  
12 if the material is determined to be privileged and/or protected, the Receiving Party  
13 shall remove such material from any secondary media to which the material has  
14 been transferred and destroy any hard copies that have been created (including  
15 without limitation media and hard copies in the possession of its counsel, witnesses,  
16 consultants, and/or experts) and, upon the production of replacement media  
17 containing only the non-privileged and/or non-protected portion of the production  
18 that included the inadvertently produced privileged and/or protected material, the  
19 Receiving Party shall return to the producing party the original media containing  
20 the inadvertently produced privileged and/or protected material.

21                   (2) If there is a dispute whether the specified information is privileged  
22 or subject to protection, the issue shall be presented in accordance with Central  
23 District of California Local Rule 37. Until the Court makes a determination as to  
24 the privilege or protected status, the Receiving Parties shall not use the specified  
25 information in any way (including at depositions) or disclose the specified  
26 information.

1           **19. Disposition Upon Conclusion.** Within sixty (60) calendar days after  
2 final judgment (whether after settlement, trial, or otherwise) of this Action,  
3 including the time for filing and resolution of all appeals, or such other period as  
4 the parties agree upon, each Receiving Party shall either (a) return to the  
5 Designating Party or (b) destroy and certify such destruction to the Designating  
6 Party, all documents, objects and other materials produced or designated as  
7 containing Designated Information under this Protective Order, and each Receiving  
8 Party shall destroy in whatever form, stored or reproduced, all other documents,  
9 objects and other materials that contain or refer to Designated Information.  
10 Notwithstanding the foregoing, counsel of record in this Action may retain copies  
11 of briefs and other papers filed with the Court, deposition transcripts, and attorney  
12 work product that contains or reflects Designated Information, so long as such  
13 briefs and other papers are maintained in confidence in accordance with the  
14 provisions of this Protective Order and documents designated as containing  
15 Designated Information produced by Designating Parties are returned or destroyed.

16           **20. Jurisdiction.** The Court retains jurisdiction to amend, to modify or to  
17 enforce this Protective Order upon stipulation of the parties to this Action, motion  
18 by any Designating Party, or on its own motion.

19           **21. Violation of this Protective Order.** In the event anyone violates or  
20 threatens to violate the terms of this Protective Order, the aggrieved Designating  
21 Party may immediately apply for injunctive relief against any such person violating  
22 or threatening to violate any of the terms of this Protective Order. The parties and  
23 any other person subject to the terms of this Protective Order agree that this Court  
24 shall retain jurisdiction over them for the purpose of enforcing this Protective  
25 Order, the terms of which shall survive the conclusion of this Action.

26           If Designated Information is disclosed in violation of this Protective Order,  
27 any person subject to this Protective Order who caused, permitted or was otherwise  
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1 responsible for the disclosure shall immediately inform the Designating Party of all  
2 pertinent facts relating to the disclosure, and shall make every effort to prevent any  
3 further disclosure, including any disclosure by any person who received any  
4 Designated Information in violation of this Protective Order.

5 **22. The Parties Have the Right to Seek Further Relief.** This Protective  
6 Order is without prejudice to the right of a Designating Party or person subject to  
7 this Protective Order to seek relief from the Court, upon good cause shown, from  
8 any of the provisions or restrictions provided herein.

9 **23. Other Proceedings.** Any person subject to this Protective Order who  
10 receives a subpoena or other request for the production or disclosure of any  
11 Designating Party's Designated Information shall promptly give written or  
12 facsimile notice to the Designating Party, identifying the information sought and  
13 enclosing a copy of the subpoena or other request. The person subject to the  
14 subpoena or other request shall not produce or disclose the Designated Information  
15 without consent of the Designating Party, or until ordered to do so by a court of  
16 competent jurisdiction, provided that the Designating Party makes a motion or other  
17 application for relief from the subpoena or other request in the appropriate forum  
18 within twenty-one (21) days from the date the Designating Party receives notice of  
19 the service of the subpoena.

20 **24. Use at Trial.** Any documents introduced at trial, regardless of  
21 designation under this Order, will be presumptively available to all members of the  
22 public, including the news media, unless good cause is shown to the District Court  
23 Judge in advance of the trial.

1 IT IS SO ORDERED:

2 DATED: July \_\_, 2009

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Hon. Fernando M. Olguin  
United States District Court



**Exhibit A****AGREEMENT TO ABIDE BY PROTECTIVE ORDER**

I have read the Protective Order applicable to the above-captioned Action (the "Protective Order"). I understand its terms and agree to be fully bound by them, and hereby submit to the jurisdiction of the United States District Court, Central District of California, for purposes of the enforcement of the Protective Order. I understand, in particular, that any Confidential Information and any copies, excerpts or summaries thereof and materials containing Confidential Information derived therefrom, as well as any knowledge or information derived from, any of the aforementioned items may be used only for purposes of this litigation and may not be used for any other purpose, including without limitation, in connection with any other litigation, judicial, administrative proceeding, dispute or case, or for any business, competitive, or commercial purpose. I further understand that failure to abide fully by the terms of the Protective Order may result in legal action and sanctions.

Dated: \_\_\_\_\_

Agreed: \_\_\_\_\_